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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

NO. 82-2124

WILSON ARCHER, et al.,
Appellants,

v.

METROPOLITAN TRANSIT AUTHORITY, et al.,
Appellees.

On Appeal from the Court of Appeals for
the Third Supreme Judicial District of Texas

Appellees, Bob Bullock, Comptroller of Public Accounts of the State of Texas and The State of Texas' Motion to Dismiss

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Appellees, Bob Bullock, Comptroller of Public Accounts of the State of Texas and The State of Texas' Motion to Dismiss

* * * *

QUESTIONS PRESENTED FOR REVIEW

Do the election units established by Article 1118x, V.T.C.S., violate the "one man, one vote" rule applicable to legislative apportionment thereby rendering the statute unconstitutional pursuant to the Equal Protection Clause of the Fourteenth Amendment?

Are the classifications established by Article 1118x, V.T.C.S., pertaining to the units of election rationally related to the purpose of the statute and therefore not violative of the Equal Protection Clause of the Fourteenth Amendment?

Does Article 1118x, V.T.C.S., violate the Equal Protection Clause of the Fourteenth Amendment and its "one man, one vote" principle by providing for appointment rather than election of the board of directors of the Metropolitan Transit Authority?

LIST OF PARTIES

Wilson Archer, Appellant

Jerry Hamilton, Appellant

Ellis L. Herron, Appellant

Wilson's Superette, Inc., Appellant

City of Humble, Appellant

Metropolitan Transit Authority, Appellee

Bob Bullock, Comptroller of Public Accounts of the State of Texas, Appellee

The State of Texas, Appellee

CONTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Appellants adequately set forth the constitutional and statutory provisions involved herein in their Jurisdictional Statement and the Appendix thereto.

STATEMENT OF THE CASE

Plaintiffs, Appellants here, filed suit in the District Court of Travis County, Texas, 53rd Judicial District seeking a declaratory judgment that Article 1118x, V.T.C.S., is void and unconstitutional, that the Metropolitan Transit Authority (MTA) is without legal existence, that the Comptroller of Public Accounts is not legally authorized to administer and collect the sales and use tax imposed in Article 1118x, V.T.C.S., and that the MTA should be permanently enjoined from expending funds derived from the sales and use tax.

Defendants, Appellees here, MTA, Bob Bullock, Comptroller of Public Accounts of the State of Texas, and the State of Texas, filed answers.

The case was tried before the court without a jury on June 18, 1980. The court rendered judgment that Plaintiffs take nothing against Defendants on August 8, 1980 and Plaintiffs appealed. The Court of Appeals for the Third Supreme Judicial District issued a decision on June 2, 1982, accompanied by a written opinion holding Article 1118x, V.T.C.S., constitutional and affirming the trial court. Plaintiffs' application for writ of error to the Texas Supreme Court was denied February 10, 1983. Subsequently, the Supreme Court of Texas denied Plaintiffs' Motion for Rehearing on March 30, 1983.

Appellants are challenging the creation of a metropolitan transit authority in the Houston metropolitan area on the grounds that the enabling

legislation, Article 1118x, V.T.C.S., is unconstitutional. Consisting of three acts passed in 1973, 1975, and 1977 by the Texas Legislature, the statute was enacted to deal with the problems in metropolitan areas caused by an increasing number of vehicles. The Act itself sets out the major reason for its passage. In Section 1 of the Act, the legislature found that a dominant part of the state's population is located in metropolitan areas that cross the boundary lines of local jurisdictions and counties, Sec. 1(a), and that the increasing concentration of population in these areas accompanied by an increasing number of automobiles was leading to greater pollution, causing injury to both persons and property. Sec. 1(b). The increasing traffic congestion caused by the large number of automobiles adversely affected the health and welfare of the citizens of the metropolitan area and its economy. Sec. 1(c). In part, the increasing proliferation of motor vehicles was caused by the lack of mass transit services and mass transit systems should be encouraged in order to improve the quality of air and reduce traffic congestion. Sec. 1(d).

The City of Houston and its metropolitan area illustrates these problems. Between 1970 and 1980 there was a 68% increase in miles of traffic per day in the Houston area and in the same period traffic congestion substantially worsened. Emissions from motor vehicles in the Houston area was approximately 368 tons per day of vehicle pollution. Peak hour travel speeds on Houston freeways dramatically decreased.

In the early 1970's, Houston had a horse and buggy transportation system with a terrible pollution problem and was ineligible for Federal mass transit funds due to the lack of any area-wide transportation system. In November of 1973, a proposed county-wide transportation system, Houston Area Rapid Transit Authority, (HARTA), funded by an emission tax was voted down.

Based upon that experience, public officials in Harris County made suggestions to the legislature for enabling legislation to allow the creation of a mass transit authority acceptable to the people of Harris County. The units of election were changed from one county-wide up or down vote. Under Article 1118x, V.T.C.S., a principal city and its enclave cities, defined as those cities located within the perimeter of the outer boundary of the city, would vote as one unit, Sec. 5(f)(1), thereby enabling the area with the greatest need for such a transportation system to vote as a single unit. The Commissioner's Court of the county would create no more than five election units in the unincorporated area of the county, Sec. 5(c) and (f), and incorporated cities not within the perimeter of the outer boundary of the principal city would each be a separate unit of election. Sec. 5(f)(3). The transit authority was to be funded with a sales tax, and changes were made in the selection of the board to make it more representative. The size of the principal city was reduced from 1,200,000 to 600,000 so that other cities, particularly San Antonio, would have the option of creating such an authority.

As finally enacted in 1977, the statute provides that the governing body of a city, with not less than 600,000 people located in a metropolitan area, after being presented with a petition signed by 5,000 people, giving notice, and holding public meetings, could create a metropolitan rapid transit authority. Sec. 3(a) and (b). "Metropolitan area" is defined in the statute as an area having a population density of not less than 250 persons per square mile and containing not less than 51% of the incorporated territory comprising a city having a population of not less than 600,000 inhabitants. Sec. 2(a). The statute authorized funding through a sales tax not to exceed 1% collected by the State Comptroller and then remitted to the MTA. Sec. 11B. Such a tax is imposed only after approval of the

voters in the various election units. Sec. 5. However the authority would not come into existence unless the election unit comprised of the principal city and the enclave cities voted in its favor. Sec. 5(g).

The City of Houston, being the principal city of Harris County and containing over 600,000 people, initiated proceedings to create a rapid transit authority within Harris County and portions of adjacent counties. After a hearing on October 4, 1977, the governing body of Houston created the Houston Metropolitan Rapid Transit Authority with its initial territory. Later, the Mayor of Houston was authorized to appoint the initial Board of Directors.

Harris County Commissioner's Court created five units of election in the unincorporated areas of the county taking into account the transportation interests of the various areas of the county. The Board of Directors of the MTA called an election for August 12, 1978 to determine whether the authority should be confirmed and a 1% sales tax imposed. The election was held in the following units of election: (1) five unincorporated areas were designated by the Commissioner's Court of Harris County and each voted as one unit of election; (2) all incorporated areas, including Humble, within the perimeter of the outer boundary of the City of Houston constituted one unit of election; (3) each incorporated city and town located outside of the perimeter of the outer boundary of the City of Houston voted as a unit of election.

Two unincorporated areas comprised of a great many suburban commuters voted for the authority. The remaining three units, comprised of people with different transportation interests, voted not to join the authority. The majority of the voters in the election unit comprising Houston and the incorporated cities and towns within the perimeter of Houston's outer boundary voted

to levy the tax and join the authority by a margin of 63,510 to 47,596. However, within the election precincts of Humble the majority of people voted against joining the MTA. With respect to the incorporated areas outside the perimeter of Houston's outer boundary seven cities voted to join the MTA and the remainder opted out. Thus, the principal city,its enclave cities, and the unincorporated areas of the county with large numbers of suburban commuters voted to join the MTA.

ARGUMENT: THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL

Bob Bullock, Comptroller of Public Accounts of the State of Texas and the State of Texas, Appellees, in the above entitled case, move to dismiss Appellants' Appeal on the grounds that the questions presented are so unsubstantial as not to need further argument. The Court of Appeals for the Third Supreme Judicial District of Texas correctly decided the case.

THE RATIONAL BASIS TEST SHOULD BE APPLIED TO TEST THE CONSTITUTIONALITY OF ARTICLE 1118x, V.T.C.S.

Appellants complain the establishment of the Metropolitan Transit Authority and the imposition of a 1% sales tax by a single-shot election violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution because the election units violate the "one man, one vote" rule and that the "strict scrutiny" test should be applied to hold the election units invalid. The State of Texas believes that the classifications created by the statute should be measured by the rational basis test, that the "one man, one vote" rule does not apply to the particular election by which the MTA was created, and that the election units are rationally related to the purpose of Article 1118x, V.T.C.S., which

is the creation of a mass transit authority, and therefore the statute is constitutional. The decision of the Court of Appeals of the Third Supreme Judicial District of Texas should be affirmed.

It must be emphasized that the MTA is a special or limited purpose district. Specifically, it was created pursuant to one statute to establish and operate a mass transit system. A "mass transit system" is defined in Article 1118x, Sec. 2, V.T.C.S., as follows:

> (e) "Mass transit" means transportation of passengers and hand carried packages and/or baggage of said passengers by means of motorbus, trolley coach, street railway, rail, suspended overhead rail, elevated railways, subways, or any other surface, overhead or underground transportation (except taxicabs), or by any combination of the foregoing.
>
> (f) "System" means all real and personal property of every kind and nature whatsoever, owned or held at any time by an authority for mass transit purposes, including (without limiting the generality of the foregoing), land, interests in land, buildings, structures, rights-of-way, easements, franchises, rail lines, bus lines, stations, platforms, terminals, rolling stock, garages, shops, equipment and facilities (including vehicle parking areas and facilities and other facilities necessary or convenient for the beneficial use and access of persons and vehicles to stations, terminals, yards, cars, and buses), control houses, signals and land, facilities and equipment for the protection and environmental enhancement of all such facilities.

These two definitions show the wide variety of problems a mass transit system must cope with and the many decisions that must be made. Section 6(a) of the Act gives the MTA the powers necessary to carry out and effectuate the purpose of the Act. Sections 6(b) through 6(q) then list a number of its powers. While the MTA has a variety of powers including the right to sue, Sec. 6(c), to acquire properties, Sec. 6(d), to operate and maintain systems within other legal entities, Sec. 6(e), to condemn property, Sec. 6(g), to establish fares, Sec. 6(j), and enter into contracts, Sec. 6(l), these powers are all related to the creation and operation of a mass transit system. The MTA does not provide general governmental service as does the state or even a county. However, the complexity of its task means it needs a variety of powers to carry out the necessary operations of a mass transit system.

In order to determine whether or not the citizens of Humble were denied equal protection under the Fourteenth Amendment by the terms of the MTA enabling legislation, the proper test must be applied. The United States Supreme Court has developed two tests for determining the constitutionality of government-made classifications. The legislative action must be evaluated in terms of either a strict scrutiny test or a rational basis test.

The strict scrutiny test emerged in *Korematsu v. United States*, 323 U.S. 214 (1944), where the Court held that legal restrictions on the civil rights of a single racial group were "immediately suspect" and would be subject "to the most rigid scrutiny" and upheld only if found to be necessary restrictions. The types of governmental classifications which give rise to the test must involve either a "fundamental right" or a "suspect" classification. *Marshall v. United States*, 414 U.S. 417, 421 (1974).

The Court has specifically declared as "suspect" classifications those based on alienage, *Sugarman v. Dougall*, 413 U.S. 634, 641-43 (1973); nationality, *Korematsu, supra*, at 216; and race, *McLaughlin v. Florida*, 379 U.S. 184 (1964). The characteristics of a suspect class have been defined as follows: (1) the class has immutable characteristics over which individuals have little or no control", *Kahn v. Shevin*, 416 U.S. 351 (1974); (2) the class has "a history of purposeful unequal treatment," *San Antonio Independent School District v. Rodriquez*, 411 U.S. 1, 28 (1973); (3) the class has been "relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process," *Rodriquez, supra*, at 28. The citizens of Humble, as a class, do not fall within any of these categories.

Fundamental rights which are subject to the strict scrutiny test are those which are explicity or implicity guaranteed by the Constitution. *Rodriquez, supra*, at 33. The Supreme Court has specifically designated certain rights as constitutionally guaranteed. These rights include that of association, *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 101 (1972); interstate travel, *Shapiro v. Thompson* 394 U.S. 618 (1969); privacy, *Roe v. Wade*, 410 U.S. 113 (1973); and voting, *Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966).

Although it may appear that the fundamental right to vote is involved in this case, there must be more than just the appearance of involvement of a fundamental right. Incidental burdens or "trival inconvenience" do not warrant the imposition of strict scrutiny. *O'Brien v. Skinner*, 414 U.S. 524, 532 (1974); *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802 (1969). Legislative enactments may affect a voter, but this does not inevitably mean that his fundamental right to vote has been infringed. Many statutory restrictions on voting rights have been upheld as

necessary to insure an orderly electoral process. For example, not every voter can place his name on the ballot; he can legitimately be required to demonstrate public support for his candidacy. *American Party of Texas v. White*, 415 U.S. 767 (1974). Similarly, a state law requiring citizens to register to be eligible to vote is recognized as a justifiable restriction on the franchise. *Mason v. Missouri*, 179 U.S. 328 (1900).

In some instances, a complete denial of voting rights was found not to infringe a fundamental right. Non-land owners were denied the right to vote in the elections of governmental units that have a special limited purpose, yet the legislative enactment was not subjected to strict scrutiny. *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973); *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 743 (1973); *Ball v. James*, 451 U.S. 355 (1981). Some Supreme Court cases which have examined voting rights as related to special district elections or special issue referenda in cities have declared invalid statutes which deny to certain groups the right to vote. *Kramer v. Union Free School District*, 395 U.S. 621 (1969); *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970). In its argument that the "strict scrutiny" test should be applied, Petitioners cite *Cipriano v. City of Houma*, *supra*, and *City of Phoenix v. Kolodziejski*, *supra*. It is important to realize those cases involve certain classes of voters being completely deprived of the right to vote. No such circumstance is presented in this case. In this case there has been no denial of a fundamental right and none of the Appellants represent a suspect class. Consequently "the rational basis" test should be applied to test the statute and not the "strict scrutiny" test.

THE "ONE MAN, ONE VOTE" RULE IS NOT APPLICABLE

Appellants allege that the MTA enabling legislation violates the principle of "one man, one vote." This principle has been used to strike down legislative apportionment schemes which deny voting rights by diluting a citizen's vote and resulting in under-representation. *Reynolds v. Sims*, 377 U.S. 533 (1964); *Wesberry v. Sanders*, 376 U.S. 1 (1964). *Avery v. Midland County*, 390 U.S. 474 (1968). The Court's holdings in these cases specify that the Equal Protection Clause safeguards a citizen's right to equal legislative representation. A person's vote is "diluted" if a heavily populated area has the same amount of representation as a sparsely populated area. In *Avery v. Midland County, supra*, the Court held the "one man, one vote" rule applied to units of local governments having general governmental powers over an entire geographical area. In concluding Texas counties possessed such general governmental power, the Court emphasized that the commissioners maintain buildings, administer welfare services and determine school districts both inside and outside the city. *Id.* at 483. The Court also pointed out that refusing to exercise such powers as building a library or participate in a federal food stamp program is as significant a decision as exercising such powers. *Id.* at 483.

In cases involving special districts the Court has held the "one man, one vote" rule is inapplicable. In *Salyer Land Co. v. Tulare Lake Water Storage District, supra*, the Court held that a California statute limiting the electorate for the Board of Directors of the Tulare Lake Basin Water Storage District to landowners and apportioning the vote according to the assessed value of the land was constitutional. The Court emphasized that at issue was a special purpose district and the activities of the district disproportionately affected landowners. Consequently, it held that the popular election requirements enunciated in *Reynolds v. Sims, supra*, were

inapplicable to elections of this nature. *Id.* at 730. The court applied the rational basis test when it stated that in a special district the question is whether ". . . any state of facts reasonably may be conceived to justify California's decision to deny the franchise to lessees while granting it to landowners." *Id.* at 332. See also the companion case of *Associated Enterprises, Inc. v. Toltec Watershed Improvement District, supra.*

In a similar, more recent case, *Ball v. James, supra,* the court ruled a voting scheme for the elections of directors to an agriculture improvement and power district which limited the franchise to landowners did not violate the "one man, one vote" rule because it was a limited purpose district and its activities disproportionately affected landowners. In reaching its conclusion that the district does not exercise the sort of governmental powers requiring "one man, one vote," the Court pointed out it did not administer governmental functions such as street maintenance, operation of schools, sanitation, health or welfare services. Except for the first item the MTA does not provide such services. The MTA does have taxing authority to increase taxes, but that may be done only by the voters within the authority in a duly called election. Sec.11A(b). It is not a general governmental unit.

What is at issue here is the drawing of boundary lines for the election units in a single-shot election. The voters in certain election units approved the creation of the MTA and the imposition of a sales tax in a single referendum. Legislative representation is not at issue in the instant case. Supreme Court cases have recognized the wide discretion the states have in forming and allocating governmental tasks to local subdivisions and the discrete interests that such local governmental units may have. *Reynolds v. Sims, supra; Lockport v. Citizens for Community Action,* 430 U.S. 259, 266 (1977). In *Lockport,* the Supreme Court upheld a New

York law providing that a county charter will go into effect if approved in a referendum by separate majorites of voters who live within the cities and those who live outside the cities within the county.

The Court stated that:

> [E]qual protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives are of limited relevance, however, in analyzing the propriety of recognizing distinctive voter interest in a "single-shot" referendum.

The Court analyzed the interests of the affected number of voters and concluded that the differences were sufficient under the Equal Protection Clause to justify the classification made by New York law. Appellants' primary complaint is that they were included within the same election unit as the City of Houston rather than voting as a separate election unit. Generally the citizens of the unit of election comprising the principal city, Houston, would have similar transportation interests in terms of automobile congestion, pollution problems and commuter patterns. Citizens living outside this core area either in an incorporated area or unincorporated area would be further away from the major population center of the metropolitan area and may have different transportation interests. They may not be part of the major commuter approaches to the principal city and may have different transportation interests. Thus, whether or not the MTA was approved would have a disproportionate impact on the citizens within the unit of election comprising the principal city because it is there the need for mass transit is the greatest.

In this case no citizen of Humble was denied the right to vote. The voters of Humble represented themselves

in expressing their preference on the MTA issue. All other voters within the perimeter of the outer boundary of the City of Houston represented themselves in the election. The mere fact that one interest group or another concerned with the outcome of an election has found itself outvoted provides no basis for invoking constitutional protections where there is no indication that this segment of the population was denied access to the political system. *Whitcomb v. Chavis*, 403 U.S. 124, 154 (1971).

THE CLASSIFICATIONS CREATED BY THE STATUTE ARE RATIONAL

The voting scheme for the creation of election units is rationally related to the purpose of the statue which is to create mass transit authorities. Essentially, what the election unit classifications accomplish is to create one large voting unit consisting of the principal city plus the enclave cities within the perimeter of the outer boundary of the principal city. The unincorporated areas are divided into voting units by Commissioner's Court, and the remaining incorporated cities, not wholly within the outer boundary of the principal city, vote as separate election units.

Treating the principal city and its enclave cities as one voting unit is a rational step toward the creation of a mass transit system. At the trial there was testimony that to be successful, a mass transit system needs to have the entire urban area under one authority or city and that unsuccessful systems have only small areas or fractions of the areas in which they have some control. A successful system needs a territory that is uniform. With the principal city and its enclave cities as one unit, any mass transit system adopted would be guaranteed a substantial core area as a base of operation. Allowing each incorporated city within the perimeter of the outer boundary of the city to vote

separately could result in a highly ineffective checkerboard pattern. As established, the Houston MTA is contiguous with some minor exceptions, map app. p. 13. Having determined to treat the principal city and its enclave cities as one unit, the legislature had to decide how to establish voting units outside the perimeter of the outer boundary of the principal city.

The legislature chose to have Commissioner's Courts draw the boundaries for voting units in unincorporated areas. This is a convenient method since Commissioner's Court is responsible for providing service to unincorporated areas, and is in an excellent position to establish voting units by transportation interests. In fact, the lines were drawn so that the people in the same voting unit had the same grouping of transportation interests. Commuter suburban type areas were included in the same voting units. Nothing could be more rationally related to the purpose of the Act. The incorporated cities not within the outer perimeter of the principal city are already well established, discrete political entities. There is nothing unreasonable in having them vote as separate election units.

Appellants seem to believe that the only election units constitutionally acceptable would be either one unit of election such as the HARTA proposal or units of approximately equal population. This completely ignores designing election units based upon the transportation interest of the voters. Essentially the transportation interests of the electorate provide the basis of the election units of Article 1118x, V.T.C.S. The classifications created by the statute are rationally related to the purpose of the statute. That purpose, it should be emphasized, is the creation of a special purpose entity to provide mass transit.

Appellants assert that since Humble's relationship to the city of Houston is in many ways similar to that of Jacinto City and Galena Park, which voted as separate election units, then the statute is unconstitutional. Merely because the residents of the city of Humble, an enclave city, are treated differently from residents of Jacinto City and Galena Park, cities which are almost enclave cities, is no reason to invalidate the entire statute. The statute creates election units which may be used in other cities and in fact have been used in San Antonio. The legislature has wide latitude in drawing lines and the decision of the legislature must be accepted unless it is wide of the mark. *Village of Belle Terre v. Boraas,* 416 U.S. 1 (1974). As has been demonstrated, the election unit classifications are rationally related to the purpose of the statute. Jacinto City and Galena Park, though close to being enclave cities, are not. Merely because two cities that are not quite enclave cities were properly excluded from the voting unit containing the principle city does not mean the statute is unconstitutional.

Appellants comparison of the enabling legislation pursuant to which the Houston MTA was created, Article 1118x, V.T.C.S., and legislation applicable to other sorts of metropolitan areas, Article 1118y, V.T.C.S., is beside the point. If the classifications created by the statute are rationally related to the purpose of the statue and the statute is constitutional, it is immaterial that the Texas Legislature may have designed another scheme for other types of metropolitan areas with different transportation needs.

THE MEMBERS OF THE MTA BOARD OF DIRECTORS DO NOT HAVE TO BE ELECTED

Appellants argue that Article 1118x, V.T.C.S. is unconstitutional because it provides in Sections 4 and 6B

that the Board of Directors shall be appointed rather than elected.

In the leading case on the issue *Sailors v. Board of Education of the County of Kent*, 387 U.S. 105 (1967), the United States Supreme Court upheld the constitutionality of a Michigan statute which provided for the members of a county school board to be appointed rather than elected. It could find no constitutional reason why state or local officers of non-legislative character could not be appointed rather than elected. *Id.*, at 108. The *Sailors* court quoted *Reynolds v. Sims*, thus:

> Political subdivisions of States -- counties, cities or whatever -- never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the carrying out of state governmental functions. As stated by the Court in *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178, these governmental units are 'created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them,' and the number, nature and duration of the power conferred upon [them] . . .and the territory over which they shall be exercised rests in the absolute discretion of the State.

Id. at 107-08. A state, county or municipal government has vast leeway in the management of its internal affairs. *Id.* at 109. The court concluded its analysis by stating:

> Since the choice of members of the county school board did not involve an election and

> since none was required for these nonlegislative offices, the principle of "one man, one vote" has no relevancy."

Id. at 111.

In *Hadley v. Junior College District of Metropolitan Kansas City*, 397 U.S. 51 (1970) the Supreme Court struck down as violating the Equal Protection Clause a scheme of apportionment for election of junior college trustees. The Court specifically limited its decision to the situation where the state had decided to choose the officers by election. The court in *Hadley*, on page 58, cited *Sailors* for the proposition that,

> [w]here a State chooses to select members of an official body by appointment rather than election, and that choice does not itself offend the Constitution, the fact that each official does not "represent" the same number of people does not deny those people equal protection of the laws.

Later cases by the United States Supreme Court, specifically, *Salyer Land Co. v. Tulare Water District*, *supra*, and *Lockport v. Citizens for Community Action*, *supra*, make clear that equal protection principles are of limited relevance in analyzing "single-shot" referenda or special-purpose governmental entities.

There can be no doubt the MTA is a special purpose district and not a governmental unit with general governmental powers over an entire geographical area. The MTA provides one major governmental service--that of mass transit. It is not empowered to have welfare services nor to operate federally funded programs such as food stamps or aid to families with dependent children. It does not run schools or have sanitation or sewage responsibilities. It has no court

system of its own. It does not have its own fire department. While it does have substantial powers such as eminent domain, Sec. 6, it simply is not a general governmental entity comparable to a city or county. There is no constitutional requirement that the MTA's board of directors be elected.

CONCLUSION

Appellants' Appeal should be dismissed.

Respectfully submitted,

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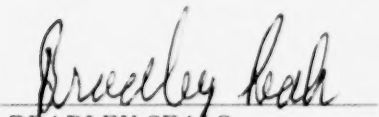

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

NO. 82-2124

WILSON ARCHER, et al.,
Appellants,

v.

METROPOLITAN TRANSIT AUTHORITY, et al.,
Appellees.

PROOF OF SERVICE

I hereby certify that on the 27th day of July, 1983, three copies of the above and foregoing Appellees, Bob Bullock, Comptroller of Public Accounts of the State of Texas and the State of Texas' Motion to Dismiss was sent certified U.S. mail to Mr. Jonathan Day, MAYOR, DAY AND CALDWELL, Pennzoil Place, North Tower, Houston, Texas 77002 and Mr. Robert Burns, Ten Ten Lamar Building, Suite 1111, Houston, Texas 77002.

Bradley Seals
BRADLEY SEALS

No. 283,604

City of Humble, et al.	§	In the District Court of
	§	
vs.	§	Travis County, Texas
	§	
Metropolitan Transit	§	
Authority, et al.	§	53rd Judicial District

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-captioned cause came on for trial before the Court on June 18, 1980. All parties and their attorneys were present. After considering the pleadings, the evidence, the argument and briefs from counsel, the Court, in response to a request from Plaintiffs, makes its findings of fact and conclusions of law as follows:

FINDINGS OF FACT

1. In September 1977, the governing body of the City of Houston instituted proceedings to create a rapid transit authority under Tex.Rev.Civ.Stat.Ann. art. 1118x.

2. In October 1977, the governing body of the City of Houston created a rapid transit authority pursuant to Art. 1118x.

3. The City of Houston, Texas, had a population of not less than 1,200,000 inhabitants, according to the 1970 Federal Census at the time of the creation.

4. The area within the boundaries of the rapid transit authority as created by the governing body of the City of Houston had a population density of greater than 250 persons per square mile at the time of the creation.

5. The City of Humble, Texas, was located wholly within the perimeter of the outer boundary of the City of Houston at the time of the creation.

6. In July 1978, the board of directors of the rapid transit authority ("Metropolitan Transit Authority" or

"MTA") adopted an order calling for an election confirming its creation and authorizing a sales and use tax for its benefit not to exceed one percent (1%).

7. Five (5) election units were created in the unincorporated areas of Harris County by the Commissioners Court of Harris County.

8. All incorporated areas within the perimeter of the outer boundary of the City of Houston voted as one election unit ("enclave cities").

9. Each incorporated town or city within the authority which was not located within the perimeter of the outer boundary of the City of Houston voted as a separate election unit.

10. The confirmation and tax authorization election was held in August 1978.

11. The election unit comprised of the City of Houston and its enclave cities voted to confirm the creation of MTA and authorize the proposed tax.

12. Two of the five unincorporated election units voted to confirm the creation of MTA and authorize the proposed tax.

13. The cities of El Lago, Friendswood, Katy, Missouri City, Taylor Lake Village and Waller voted to confirm the creation of MTA and authorize the proposed tax.

14. The Comptroller of the State of Texas has been collecting the Sales and Use Tax pursuant to Article 1118x and the 1978 confirmation and tax authorization election on receipts from taxable transactions after October 1, 1978.

15. Plaintiff Wilson's Superette, Inc. has been paying the Sales and Use Tax to the Comptroller on receipts from the sale of goods sold after October 1, 1978.

16. The City of Humble was included in the election unit comprised of the incorporated areas within the perimeter of the outer boundary of the City of Houston.

17. The individual plaintiffs in this lawsuit voted in the 1978 confirmation and tax election.

18. The vote of each qualified voter in the City of Humble was given the same weight as the vote of every other voter in the election unit compromised of the City of Houston and its enclave cities.

19. The cities of Jacinto City and Galena Park, Texas, voted as separate election units.

20. The cities of Jacinto City and Galena Park are not wholly located within the perimeter of the outer boundary of the City of Houston.

21. The boundaries of the five election units for the unincorporated areas of Harris County, were drawn so as to define into separate units areas that had common travel patterns, common commercial and trade patterns, shared transportation and mass transit needs and generally shared interests of all kinds.

22. The concentration of vehicles and the resulting lack of mobility and the existing pollution in major metropolitan areas in Texas and particularly in the Houston metropolitan area adversely affect the economy of the State of Texas.

23. The concentration of motor vehicles and the resulting lack of mobility and the existing pollution in major metropolitan areas in Texas adversely affect the health and welfare of the citizens of those areas and the economic life of those areas.

24. There exists a compelling need to remedy the vehicular congestion and the concentration in major metropolitan areas in Texas.

25. As population in a metropolitan area increases, vehicular concentration and congestion tend to increase.

26. As population density in an area increases, vehicular concentration and congestion tend to increase.

27. Cities with a population of not less than 600,000 population generally have a greater need for a mass transit system than cities with a population of less than 600,000.

28. Metropolitan areas with a population density of not less than 250 persons per square mile generally have

a greater need for a mass transit system than areas with a lower population density.

29. Unique mass transportation problems arise in a metropolitan area with two large primary population centers, and these unique problems require substantially different remedies than those which are suited to a metropolitan area with only one primary population center.

30. In order for a mass transit system to operate effectively in the Houston metropolitan area, it is necessary that the City of Humble and other incorporated areas within the perimeter of the outer boundary of the City of Houston be included in the area served by and supporting the mass transit system.

31. The failure to include the enclave cities within the principal election unit could have resulted in a "checkerboard" service area for the authority. Such checkerboarding in the area of greatest need, i.e., the City of Houston and its enclave cities, would occasion operating inefficiencies and inequities in matching the authority's services with the authority's taxpayers.

32. The boundaries of MTA as described in Houston Ordinance Nos. 77-1780 and 77-1946 and the order of the MTA Board canvassing and declaring the election, are sufficiently described so that they can be located on the ground.

33. Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron are residents of the City of Humble. Plaintiff Wilson's Superette, Inc. is a Texas corporation operating in the City of Humble.

35. Plaintiffs have not incurred any special burden as a result of the cities of Jacinto City and Galena Park not being included in the voting unit comprised of Houston and its enclave cities.

36. Plaintiffs have not incurred any special burden as a result of Houston City Ordinance No. 78-1413.

37. Plaintiffs have not incurred any special burden as a result of the alleged lack of ascertainability of the MTA boundaries.

CONCLUSIONS OF LAW

1. The Texas Legislature has the power under the Texas Constitution to authorize the creation of a rapid transit authority with power to levy taxes pursuant to the terms of Article 1118x.

2. The Texas Constitution neither expressly nor impliedly prohibits the creation of a rapid transit authority with power to levy taxes pursuant to the terms of Article 1118x.

3. Article 1118x applies both to metropolitan areas which currently meet the population and density requirements and to metropolitan areas which meet those requirements in the future.

4. Article 1118x is a general law and therefore does not violate Article 3, §56 of the Texas Constitution.

5. The tax authorized by Article 1118x is levied by general law and for public purposes and therefore does not violate Article 8, §3 of the Texas Constitution.

6. The Comptroller of the State of Texas is legally authorized to collect and administer the sales and use tax authorized by Article 1118x.

7. The captions of the 1973, 1975 and 1977 Acts give fair and reasonable notice of the provision of those Acts.

8. The captions of the 1973, 1975 and 1977 Acts do not violate Article 11, §35 of the Texas Constitution.

9. Article 1118x provides reasonable standards, procedures and guidelines to be followed in determining whether a rapid transit authority shall be created and what the initial boundaries of that authority shall be.

10. Article 1118x provides the Commissioners Court with reasonable guidelines for creating separate voting units in unincorporated areas of counties included within the initial boundaries of the rapid transit authority.

11. The findings in Section 1 of Article 1118x, which state the problems sought to be remedied by the statute, provide reasonable guidelines for creating and administering a rapid transit authority.

12. Article 1118x does not unlawfully delegate legislative power to the governing body of the principal city in a metropolitan area.

13. Article 1118x does not unlawfully delegate legislative power to the Commissioners Court in counties included within the intitial territory of a rapid transit authority.

14. Article 1118x does not unlawfully delegate legislative power to the transit authority board.

15. Permitting voting units to determine whether a rapid transit authority will be created within such units is not an unlawful delegation of legislative power to the qualified voters within those units.

16. The population density requirement of §2 of Article 1118x requires an average population density of 250 persons per square mile throughout the metropolitan area, not a density of 250 persons in each included square mile.

17. Article 1118x is not void for vagueness.

18. Article 1118x does not infringe upon the governmental powers of home-rule cities in violation of Article 11, §5 of the Texas Constitution.

19. The inclusion of the City of Humble within the MTA does not impair exercise of that city's powers of annexation.

20. MTA was validly created pursuant to Article 1118x.

21. The Sales and Use Tax was validly authorized pursuant to Article 1118x.

22. The Houston metropolitan area is not a bi-county metropolitan area as defined by §15 of Article 1118x, notwithstanding the fact that the City of Houston extends into more than one county.

23. Permitting the cities of Galena Park and Jacinto City to vote as separate election units was in accordance with Article 1118x.

24. The Harris County Commissioners Court validly created five units of election in the unincorporated area of Harris County in accordance with Article 1118x.

25. Houston Ordinance No. 78-1413 was a valid exercise of authority pursuant to Article 1118x.

26. The boundaries of the MTA are defined with sufficient clarity so as to be legally valid.

27. The definition of a metropolitan area in Article 1118x does not violate Article 1, §3 of the Texas Constitution.

28. The creation of the three types of voting units in Article 1118x does not violate Article 1, §3 of the Texas Constitution.

29. The delegation of authority to the Commissioners Court to create election units in Article 1118x does not violate Article 1, §3 of the Texas Constitution.

30. The governing body of the MTA is an administrative body, not a legislative body. The MTA is a governmental unit that has a narrow, single purpose — the providing of mass transit services in a limited area of the State of Texas.

31. The appointment of MTA board members under Article 1118x does not violate Article 1, §3 of the Texas Constitution.

32. The appointment of MTA board members under Article 1118x does not violate the 14th Amendment of the United States Constitution.

33. The State of Texas has a legitimate interest in the alleviation of vehicular congestion and resulting lack of mobility and alleviating pollution in metropolitan areas.

34. Article 1118x provides a reasonable mechanism for remedying vehicular congestion and resulting lack of mobility and alleviating pollution in metropolitan areas.

35. The inclusion of the City of Humble in the voting unit comprised of the City of Houston and its enclave cities does not violate Article 1, §3 of the Texas Constitution.

36. The inclusion of the City of Humble in the voting unit comprised of the City of Houston and its enclave cities does not deprive the voters and residents of the City of Humble of equal protection of the law under the 14th Amendment of the United States Constitution.

37. Plaintiffs do not have standing to attack the creation of voting units in unincorporated areas of Harris County.

38. Plaintiffs do not have standing to challenge the exclusion of Galena Park and Jacinto City from the voting unit comprised of the City of Houston and its enclave cities.

39. Plaintiffs do not have standing to challenge the exclusion of Plum Grove from the MTA.

40. Plaintiffs do not have standing to challenge the alleged lack of ascertainability of the MTA boundaries.

41. This Court has no jurisdiction to consider Plaintiff's allegations attacking the specific procedures followed in creating MTA the legality of acts taken by the MTA following its creation and other defects in the establishment of the MTA except in a *quo warranto* proceeding.

42. The suit brought by Plaintiffs is not a *quo warranto* proceeding, notwithstanding the fact that the Comptroller of the State of Texas was named as a party defendant.

43. All findings of fact more properly denominated conclusions of law are hereby adopted as conclusions of law and all conclusions of law more properly denominated findings of fact are hereby adopted as findings of fact.

DONE this 10th Day of November, 1980, at Austin, Texas.

/S/

JUDGE PRESIDING

CT256/C

NO. 283,604

City of Humble, et al.,	§	
	§	
Plaintiffs,	§	In the District Court of
	§	
v.	§	Travis County, Texas
	§	
Metropolitan Transit Authority, et al.,	§	53rd Judicial District
	§	
	§	
Defendants.	§	

ADDITIONAL AND SUPPLEMENTAL FINDINGS OF FACT

Pursuant to the request of the Plaintiffs for additional and supplemental findings of fact and conclusions of law, the Court makes the following Findings of Fact:

FINDINGS OF FACT

1. The area within Harris County Election Unit No. 2, located wholly within the perimeter of the outer boundary of the City of Houston in August 1978, includes portions of census tracts 246, 248 and 249 as shown on Plaintiffs' Exhibit No. 28.

2. The population of such portion of Harris County Election Unit No. 2 in 1970 was 3,921 inhabitants, according to the 1970 Federal Census.

3. The population of such portion of Harris County Election Unit No. 2 in 1978 was estimated to be 20,407 inhabitants.

4. The area of Harris County Election Unit No. 3 located wholly within the perimeter of the outer boundary of the City of Houston in August, 1978, includes census tracts 224, 228, 239, 236, 238, and portions of tracts 247 and 237, as shown on Plaintiffs' Exhibit No. 28.

5. The population of such portion of Harris County Election Unit No. 3 in 1970 was estimated to be 28,218 inhabitants, according to the 1970 Federal Census.

6. The population of such portion of Harris County Election Unit No. 3 in 1978 was estimated to be 55,921 inhabitants.

7. The population in 1970, according to the Federal Census and estimate for 1978 of the incorporated areas located wholly within the perimeter of the outer boundary of the City of Houston were:

CITIES	1970	Estimated 1978 (Year-End)
HOUSTON	1,232,802	1,693,206
BELLAIRE	19,009	16,935
WEST UNIVERSITY PLACE	13,317	12,608
SOUTHSIDE PLACE	1,466	1,382
HUMBLE	3,278	6,568
VILLAGES		
BUNKER HILL	3,977	4,296
HEDWIG	3,255	3,915
HILSHIRE	627	750
HUNTERS CREEK	3,959	5,561
PINEY POINT	2,548	2,841
SPRING VALLEY	3,170	3,109

8. The population in 1970 and 1978, according to the Federal Census and estimate for 1970 and 1978, of the incorporated areas located outside the perimeter of the outer boundary of City of Houston were:

CITIES	1970	Estimated 1978 (Year-End)
BAYTOWN	43,980	48,114
DEER PARK	12,773	21,214
EL LAGO	949	3,500
FRIENDSWOOD	7,433	8,850
GALENA PARK	10,479	9,329
JACINTO CITY	9,563	10,397
JERSEY VILLAGE	765	3,297
KATY	2,596	4,309
LA PORTE	7,149	8,899
LOMAX	893	2,964
MISSOURI CITY	4,136	13,520
MORGANS POINT	593	752
NASSAU BAY	2,240	4,510
PASADENA	89,277	205,209
PEARLAND	6,444	12,234
SEABROOK	3,811	5,760
SHOREACRES	1,872	1,662
SOUTH HOUSTON	11,527	12,996
STAFFORD	2,905	13,147
TAYLOR LAKE VILLAGE	1,798	1,819
TOMBALL	2,734	3,817
WALLER	1,123	1,365
WEBSTER	2,231	3,108

9. The population in 1970 and 1978, according to the Federal Census and estimate for 1970 and 1978, of Harris County Election Units Nos. 1,2,3,4, and 5 were:

	1970	Estimated 1978
#1	32,399	141,703
#2	105,529	317,323

#3	58,406	113,292
#4	22,963	38,391
#5	18,953	67,946

10. A majority of those persons voting in the election precincts which included the City of Humble voted against confirming creation of MTA and authorizing a sales and use tax.

11. The Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron voted against confirming creation of MTA and authorizing a sales and use tax.

12. The populations of the various election units at the time of the election were not equal.

13. The unique mass transportation problems that may arise in a metropolitan area with two large population centers include the fact that patterns of commuting are different from areas where there is a single large primary population center and also the problems of overlapping governmental units are increased.

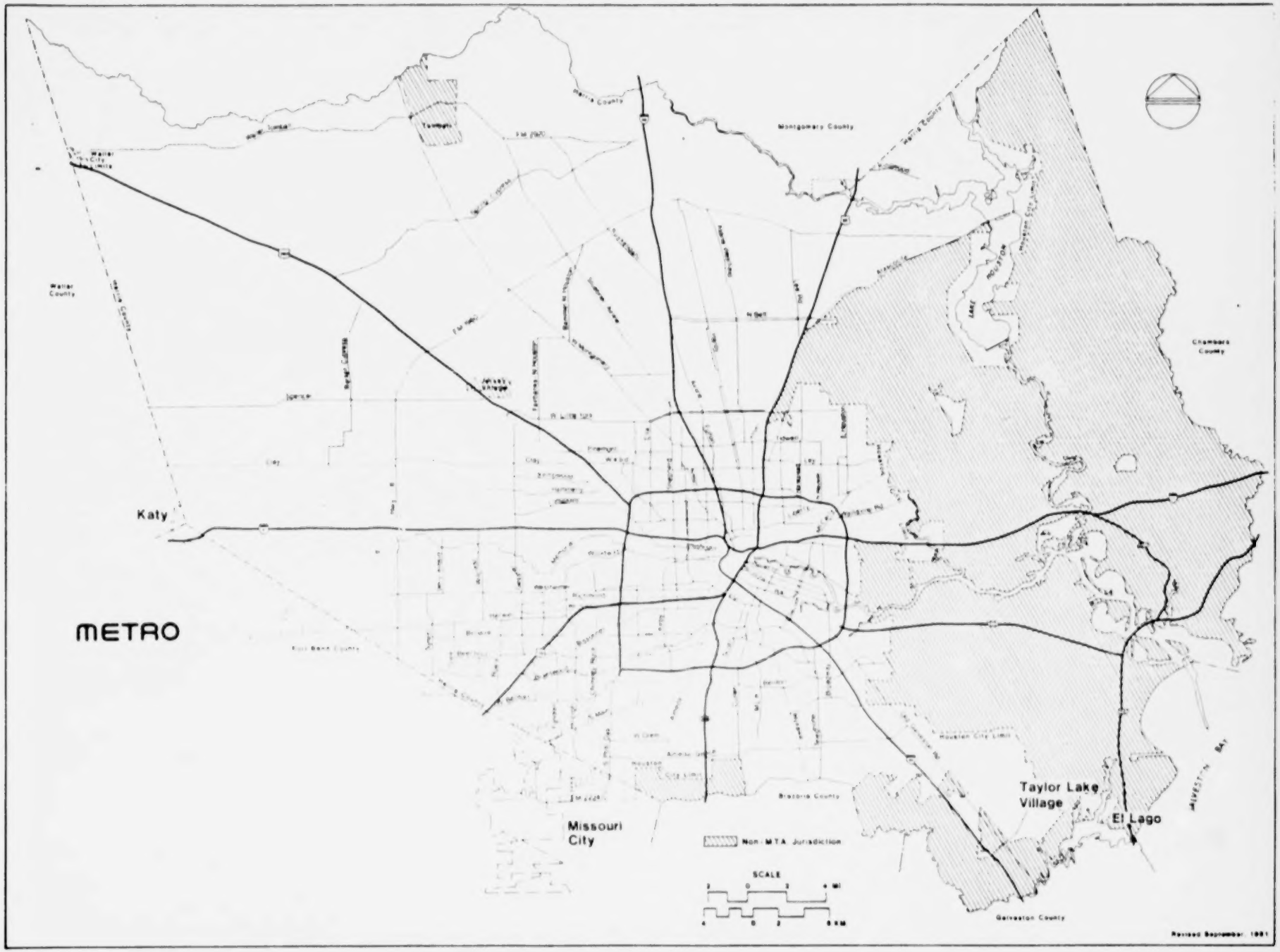
14. Plaintiffs Wilson Archer, Jerry Hamilton and Ellis L. Herron became subject to the MTA sales and use tax that a majority of those persons voting in the election precincts which included the City of Humble voted against.

15. The total annual income of MTA from sales and use tax would have been increased if the cities of Jacinto City and Galena Park had been included in the voting unit of the City of Houston.

Dated this 25th day of November, 1980, at Austin, Texas.

/S/

JUDGE PRESIDING


METRO
Katy
Missouri City
Taylor Lake Village
El Lago
Montgomery County
Chambers County
Galveston County
Brazoria County
Fort Bend County
Waller County
Non-MTA Jurisdiction
SCALE
Revised September 1981